IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

LA.App..No. 579 of 2006(D)

LAR.135/2002 OF THE SUBORDINATE JUDGE'S COURT, CHERTHALA

APPELLANT: RESPONDENT NO.2:

THE PROJECT MANAGER,
JBIC ASSISTED KWS PROJECT,
CHERTHALA.

BY ADV.SRI.BABU VARGHESE, SC, KWA.
BY ADV. SRI.SUNIL CYRIAC, SC, KWA

RESPONDENTS: CLAIMANTS AND RESPONDENT NO.1:

1. SURESH KUMAR N.PILLAI,
RESIDING AT SUNIL SADANAM,
PALLIPPURAM, ALAPPUZHA DISTRICT.

2. SUNIL BABU, RESIDING AT SUNIL SADANAM,
PALLIPPURAM, ALAPPUZHA DISTRICT.

3. KERALA STATE, REP. BY THE SPL. TAHSILDAR (LA) GENERAL,
ALAPPUZHA.

R2 BY ADV. SRI.V.N.SANKERJEE
BY ADV. SMT.R.UDAYA JYOTHI
R3 BY ADDL.ADVOCATE GENERAL

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 13/03/2007, ALONGWITH L.A.A.NO.392 OF 2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

L.A.A. NOs.579 of 2006, 392 of 2004
and
Cross Objection No.70 of 2005

Dated this the 13th day of March, 2007

JUDGMENT

Kurian Joseph, J.

An extent of 33.18 Ares of land in Sy.No.26/5/A5 of Thycattussery Village was acquired for the purpose of the Kerala Water Authority. Section 4(1) notification was published on 10.12.1998. The land was taken possession on 12.1.1999. The Land Acquisition Officer fixed the land value at Rs.2,784/- per Are. The Reference Court granted enhancement by fixing the market value at Rs.9,777/- per Are. Reliance was placed mainly on Ext.A1 document. The Reference Court found that the property covered by Ext.A1 and the one acquired are similar and similarly situated. It is the contention of the claimant that having entered a finding that they are similarly situated, the Reference Court should not have fixed the market value at one-fourth of the value of Ext.A1 property. Learned Government Pleader and learned Standing Counsel for the

Kerala Water Authority contend that Ext.A1 is only of twelve cents and that the schedule would show that the property is not exactly similar since there was sand-dune chira and trees. It is the contention of the claimant, however, that it is the situation with regard to every bit of property in that area because of the peculiar nature of the land. For the paddy field, there will be chira, there will be a sand-dune and on the chira, there will be trees. The Reference Court addressing the question found that the value claimed by the claimants before the Land Acquisition Officer was only Rs.7,500/- per cent and in no case, they cannot aspire for anything more than that since, even according to the estimation of the claimants, the value was only Rs.7,500/- per cent at the relevant time. If the value of Ext.A1 property is taken, it will be Rs.39,107/- per Are. The Reference Court rightly made a distinction between Ext.A1 property and the acquired property in the matter of fixation of market value holding that the acquired property is of larger extent, namely, 33.18 Ares, whereas Ext.A1 property is only 4.9 Ares. However, what is the basis for fixation of the

value as one-fourth value of Ext.A1 is not clear from the evidence.

2. Having heard the learned counsel for the claimants and also the learned Government Pleader and the Standing Counsel for the Kerala Water Authority, we are of the view that this is a case where the Reference Court should address the issue afresh regarding fixation of market value. Accordingly, we remit the matter to the Reference Court. In the interest of justice it will be open to both sides to adduce fresh evidence. Since the cross objection is remitted, the cross objectors shall be entitled to refund of the court fee.

The parties will appear before the Reference Court on 4.6.2006.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

ahz/